Supreme Court, U.S.
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No. 96-1458

In The

Supreme Court of the United States

October Term, 1996

SIDNEY VERDIN, JAKE BILLIOT, WICKLIFF VERDIN, AUTHOR BILLIOT, ALTON VERDIN, JAY NAQUIN, JOHN VERDIN, JR. AND FOREST BILLIOT, JR.,

Petitioners,

versus

LOUISIANA LAND AND EXPLORATION COMPANY,

Respondents.

On Petition For Writ Of Certiorari To The Louisiana Supreme Court

PETITIONERS' REPLY BRIEF

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1. *Stoll v. Gottlieb*, 305 U.S. 165, 50 S.Ct. 134, 83 L.Ed. 104 (1938) is utterly irrelevant to the question posed by this Petition. Of course a court has the power to decide whether it has jurisdiction, and its decision on that issue, if unappealed, acquires binding *res judicata* effect, which is the holding of *Stoll*. Unlike in *Stoll*, Petitioners have directly appealed the erroneous decision by the state courts below that they did have jurisdiction to "adjudicate . . . the ownership or right of possession of" Indian land or real or personal property belonging to any Indian, "or any interest therein." 28 U.S.C. § 1322 (b). As the California Supreme Court held in *Boisclair v. Superior Court*, 801 P.2d 305 (Cal. 1990), Public Law 280's prohibition "plainly supports the position that state court jurisdiction is barred whenever one litigant claims the disputed property is Indian trust land."

2. LL&E alleges that the Indians do not actually reside on the property in dispute and also questions whether the Indians' acts of possession had "some tribal communal purpose." Opposition at p. 2. Indian aboriginal title, however, is a right of occupancy and use to land that has been inhabited by the Indians and their ancestors from time immemorial, rights which cannot be terminated without the express consent of the sovereign. *Oneida County, N.Y. v. Oneida Indian Nation of N.Y. ("Oneida II")*, 470 U.S. 226, 233-4, 105 S.Ct. 1245, 1251, 84 L.Ed.2d 169 (1985). Tribal communal purpose and actual residence upon every inch of the land, however, are completely irrelevant to the issue of aboriginal title.

3. Contrary to LL&E's statements and as LL&E well knows, the Indians have not petitioned the United States Bureau of Indian Affairs for recognition as an Indian tribe, nor has the BIA issued any ruling with

regard to the petitioners before this Court. See discussion at p. 3 of Petition for Writs of Certiorari. The United Houma Nation filed papers with the BIA, but the Indians have never claimed membership in a United Houma Nation. The BIA found no such tribe as the United Houma Nation exists, but speculated that certain subgroups, such as the Point au Chien Indians, which include your petitioners, may indeed qualify for tribal recognition. LL&E's continued misrepresentation of the BIA record is not unexpected, but lamentable.

4. The federal district court did not decide that state court jurisdiction existed or even that federal question jurisdiction did not exist, but rather, it decided only that federal **removal** jurisdiction did not exist. LL&E's clever use of artful pleadings has prevented the assumption of such jurisdiction.

5. Petitioners did not offer "one shred of evidence" of their Indian status or rights at the trial of this matter because they refused to be forced into waiving their absolute right, guaranteed by Public Law 280, to have a **federal** court hear this evidence and decide the issue. This was not "forum shopping" as LL&E naively calls it. It is a steadfast refusal to accede to the forced waiver of federally protected rights that LL&E has tried to engineer.

6. *DeCoteau v. District County Ct.*, 420 U.S. 425, 95 S.Ct. 1082, 43 L.Ed.2d 300 (1975), *Hagen v. Utah*, 510 U.S. 399, 114 S.Ct. 958, 127 L.Ed.2d 252 (1994), and *Barbry v. Dauzat*, 576 So.2d 1013 (La. App. 3d Cir.), *writ denied*, 578 So.2d 136 (La. 1991), do not support the view that a state court has the jurisdiction to adjudicate claims to Indian lands. Indeed, none of these cases even involve land claims, and therein lies the distinction that has eluded the lower courts and LL&E.

7. LL&E tries to suggest that Louisiana is not bound by Public 280 by citing only to 28 U.S.C. § 1360. This section expressly grants jurisdiction in civil and criminal matters to six specific states. Public Law 280 was also codified at 25 U.S.C. § 1322, which gave **all other** states the option of assuming that jurisdiction with the consent of the Indians themselves. Both statutes, however, **withheld jurisdiction to adjudicate disputes involving title to or possession of Indian land.** 25 U.S.C. § 1322(b); 28 U.S.C. § 1360(b). Because a state court cannot adjudicate a claim to Indian land on the merits, it has no power to assert jurisdiction over such a dispute under the guise of a determination that the land at issue is not "Indian land" or that the claimants are not "Indians." In ruling on jurisdiction, the court is making the prohibited adjudication on the merits. This anomalous result, if permitted, is exactly what compelled the courts in *Boisclair, supra,* and *Ollestead v. Native Village of Tyonek,* 560 P.2d 31 (Alaska 1977) to abstain from asserting jurisdiction over an Indian land claim.

8. This case raises writ-worthy issues. The decision below is a direct conflict with the interpretation and application of Public Law 280 given by the courts of California and Alaska. Louisiana so cavalierly dismisses this law as to assert jurisdiction over Indian land claims without even discussing the matter. California and Alaska correctly respect federal jurisdiction in such matters. While equity alone is generally not a sufficient reason for the grant of certiorari, this Court has traditionally been sensitive to the mistreatment that Native Americans have received in the state courts. The result below aptly explains why such vigilance is required.

Respectfully submitted,

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